

### **REMARKS**

This responds to the Office Action dated December 18, 2006. Claim 1 is amended. No claims are cancelled or added. As a result, claims 1-21, 23-42, 44-49, and 51-55 remain pending in this patent application.

#### **Allowable Subject Matter**

Applicant gratefully acknowledges the allowance of claims 44-49 and 51-55.

Claims 4-9, 13-16, 18-21, 24-26, 29, 31-35, 37 and 39 were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Nonetheless, as discussed below, such claims are believed allowable in their present form, including the language of their base claims and intervening claims. Accordingly, Applicant respectfully requests allowance of such claims.

#### **§102 Rejection of the Claims**

1. Claims 1-3, 10-12, 17, 23 and 30 were rejected under 35 U.S.C. § 102(b) as being anticipated by Zarinetchi et al. (U.S. Patent No. 6,442,434). Applicant has amended claim 1 to overcome this rejection. Applicant cannot find in the cited portion of Zarinetchi (col. 4, lines 6-10) or elsewhere in Zarinetchi any disclosure of a transmission module that automatically initiates, without requiring user intervention, an inductive transfer of energy to the medical device to power the medical device, the automatic initiation based at least in part on the medical device coming within range of the transmission module, as presently recited or incorporated in these claims. Accordingly, Applicant respectfully requests withdrawal of this rejection of these claims.
2. Claims 1-3, 17, 23, 27, 28, 36, 38 and 40-42 were rejected under 35 U.S.C. § 102(b) as being anticipated by Prem et al. (U.S. Patent No. 5,630,836). Applicant has amended claim 1 to overcome this rejection. Applicant cannot find in the cited portion of Prem (FIG. 2) or elsewhere in Prem any disclosure of a transmission module that automatically initiates, without requiring user intervention, an inductive transfer of energy to the medical device to power the medical

device, the automatic initiation based at least in part on the medical device coming within range of the transmission module, as presently recited or incorporated in these claims. The Office Action states, regarding claims 2-3, that “to induce energy between the external and internal devices when in close proximity would be inherent, as shown in Fig. 1.” (Office Action at 5.) Applicant respectfully submits that the Office Action has not established a *prima facie* case of inherency because, as noted in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Nothing in Prem or the reasoning provided in the Office Action explains why it necessarily flows from the teachings of Prem that automatically initiating—without requiring user intervention—an inductive transfer of energy to the medical device to power the medical device is based at least in part on the medical device coming within range of the transmission module. Accordingly, Applicant respectfully requests withdrawal of this rejection of these claims.

#### Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner’s personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to

pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date

March 19, 2007

By



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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19 day of March 2007.

Name

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Signature

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